

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Time Darden	Team: Team # 6	CCRB Case #: 200707861	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/04/2007 3:30 PM	Location of Incident: Corner of § 87(2)(b) and § 87(2)(b)	Precinct: 46	18 Mo. SOL 12/4/2008	EO SOL 12/4/2008	
Date/Time CV Reported Mon, 06/04/2007 4:12 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/04/2007 4:12 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Frederic Ortiz	29958	935440	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Matthew Reid	18397	925973	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frederic Ortiz	Abuse: PO Frederic Ortiz stopped § 87(2)(b)	§ 87(2)(b)
B.POM Frederic Ortiz	Abuse: PO Frederic Ortiz searched § 87(2)(b)	§ 87(2)(b)
C.POM Frederic Ortiz	Abuse: PO Frederic Ortiz threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.POM Frederic Ortiz	Abuse: PO Frederic Ortiz issued a summons to § 87(2)(b)	§ 87(2)(b)

### Synopsis

On June 4, 2007, § 87(2)(b) was standing outside in the vicinity of § 87(2)(b) and § 87(2)(b) in the Bronx speaking with an associate, § 87(2)(b) and § 87(2)(b)'s friend when PO Frederic Ortiz and his partner, PO Matthew Reid, stopped him (**Allegation A**). § 87(2)(b) alleged that PO Ortiz subsequently searched his person (**Allegation B**) and threatened to place him under arrest (**Allegation C**). § 87(2)(b) stated that PO Ortiz issued him a summons subsequent to § 87(2)(b) stating that he intended to file a complaint regarding PO Ortiz's conduct (**Allegation D**). § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Summary of Complaint

§ 87(2)(b) called the CCRB on June 4, 2007 to file a complaint regarding an incident that occurred on the same date in the vicinity of § 87(2)(b) and § 87(2)(b) in the Bronx (encl. 5A-B). The CCRB interviewed § 87(2)(b) at the CCRB on Wednesday, August 1, 2007 (encl. 7A-D). § 87(2)(b) is a § 87(2)(b)-old Black male who is approximately 5'8" tall and weighs 143 lbs. He has black hair and brown eyes.

§ 87(2)(b) stated that on June 4, 2007 at approximately 3:30 p.m., he was in the vicinity of the corner of § 87(2)(b) and § 87(2)(b). § 87(2)(b) had just gotten food and he was returning to the apartment where he was staying for his visit to the area. § 87(2)(b) ran into an individual he identified as § 87(2)(b) and § 87(2)(b)'s friend. § 87(2)(b) subsequently provided § 87(2)(b)'s last name, § 87(2)(b). § 87(2)(b) is § 87(2)(b)'s friend's son and is approximately § 87(2)(b) of age, as is § 87(2)(b)'s friend. An unmarked blue van approached the group and two plainclothes police officers jumped out of the van. These individuals did not at any time identify themselves as police officers. § 87(2)(b) only knew the individuals were officers because he recognized one of the officers, PO Frederic Ortiz, from a previous encounter that occurred approximately a year prior to this incident. PO Ortiz said to § 87(2)(b) "I haven't seen you guys in a while." PO Ortiz and his partner, PO2, subsequently identified as PO Matthew Reid, told § 87(2)(b) and the other two individuals to get up against the van and place their hands on the van. § 87(2)(b) stated that he complied with their directives and submitted to a search of his person by PO Ortiz. § 87(2)(b) was wearing chino style pants and a dress shirt. PO Ortiz placed his hands in § 87(2)(b)'s front pockets first and removed his keys and money. PO Ortiz removed § 87(2)(b)'s wallet from his rear pants pocket. PO Ortiz placed § 87(2)(b)'s personal effects back into his pockets. § 87(2)(b) asked PO Ortiz why he was grabbing him; why he was going into his pockets; and why his demeanor was so aggressive. PO Ortiz did not respond to § 87(2)(b)'s inquiries. § 87(2)(b) described his own demeanor and tone of voice as calm throughout the interaction. § 87(2)(b) described PO Ortiz's demeanor as that of an individual abusing steroids. PO Ortiz was possessed of a very aggressive demeanor as reflected in his speech and attitude. PO Ortiz did not question § 87(2)(b) or the other two individuals. § 87(2)(b) stated that PO Ortiz and PO Reid did not request identification from the other two individuals. At one point, § 87(2)(b) attempted to turn around and get out of the position he had assumed with his hands against the van. PO Ortiz placed his hands on § 87(2)(b)'s back and lightly shoved § 87(2)(b) back into position. § 87(2)(b) stated that PO Ortiz's shove was not intended to cause him any harm and did not harm him.

PO Reid handcuffed § 87(2)(b) and placed him into the van. § 87(2)(b) was not informed why he was being handcuffed and stated that the handcuffs were too tight. § 87(2)(b) complained to PO Ortiz and PO Reid regarding how tight the handcuffs were on his wrists. PO Ortiz and his partner drove § 87(2)(b) around in the Bronx while they stopped other individuals on the street. During the ride in the van, § 87(2)(b) repeatedly inquired regarding why he was being held. § 87(2)(b) stated that he intended to file a complaint through CCRB and Internal Affairs Bureau. PO Ortiz stated that § 87(2)(b) was threatening him. PO Ortiz told him that if he kept talking he would be put through the system. Approximately an hour later, the officer released § 87(2)(b) with a summons for disorderly conduct in the vicinity of § 87(2)(b) in the Bronx near the 46<sup>th</sup> Precinct. § 87(2)(b) was not arrested.

PO Ortiz is a Puerto Rican/Latin/Black male who has dark skin, a stocky build, and short black hair. He is late 20s-early 30s in age and approximately 5'9-10" tall. He was clean shaven and dressed in plain clothes at the time of incident, including a t-shirt.

PO Reid is described as White/Italian male with a full head of crew cut black hair. He is of medium build and in his 30s in age. At the time of the incident, he was dressed in plainclothes, an NYPD t-shirt and long pants.

### **Results of Investigation**

#### **Attempts to Contact Civilian Witnesses**

The CCRB attempted to obtain a statement from the witness § 87(2)(b) named, § 87(2)(b). On August 21, 2007, § 87(2)(b) provided contact information for § 87(2)(b) and the CCRB scheduled an in-person interview with § 87(2)(b) for August 24, 2007. On August 27, 2008, the CCRB sent § 87(2)(b) a missed appointment letter for his in-person interview. On April 7, 2008, the CCRB placed a call to § 87(2)(b) and left a please call message on his voicemail. The CCRB reached § 87(2)(b) on April 8, 2008 and he scheduled an interview for April 10, 2008. § 87(2)(b) missed the interview he scheduled for April 10, 2008. To date, § 87(2)(b) has not contacted the CCRB. § 87(2)(b), § 87(2)(g)

#### **Officer Statements**

##### **PO Frederic Ortiz: Memo Book Entry**

PO Ortiz's memo book states that at 1500 hours, he issued summons no. § 87(2)(b) to § 87(2)(b) for disorderly conduct at § 87(2)(b) in the Bronx (encl. 9A-B).

##### **PO Frederic Ortiz: CCRB Statement**

The CCRB interviewed PO Frederic Ortiz of the 46<sup>th</sup> Precinct at the CCRB on September 20, 2007 (encl. 10A-C). PO Ortiz is a § 87(2)(b)-old White Hispanic male who weighs 185 lbs. and is 5'10" tall. He is bald and his eyes are brown.

On June 4, 2007, PO Ortiz worked a 1230x2105 hour tour in a SNEU assignment. He was responsible for narcotics enforcement. He and his partner, PO Reid, worked in uniform and used an unmarked, black, 10-passenger van with tinted windows.

On June 4, 2007 at approximately 3:30 p.m., PO Ortiz and his partner were driving in Sector George, which is a drug-prone location. It is nicknamed § 87(2)(b). The area between § 87(2)(b) and § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b), is a high-prone drug area. On the corner of § 87(2)(b) and § 87(2)(b) there is usually a crew of guys who hang out and sell narcotics. On the incident date, PO Ortiz and his partner noticed § 87(2)(b) as they were driving by the corner. § 87(2)(b) has a history of violence toward police and a history of problems with other dealers. Approximately a year ago, an officer was attempting to remove § 87(2)(b) from the corner when § 87(2)(b) picked the officer up and threw him down a staircase. The officer's legs were broken as a result. About six months prior, § 87(2)(b) was shot in the shoulder during a drive-by shooting. PO Ortiz stated that § 87(2)(b) is a problem on that corner. On June 4, 2007, PO Ortiz and PO Reid drove near the corner of § 87(2)(b) and § 87(2)(b) pulled over in their van, and asked the individuals who were standing on the corner to move; § 87(2)(b) moved. There were quite a few guys standing around drinking and smoking cigarettes on the corner. There were about five people sitting down on the staircase drinking when PO Ortiz initially approached and asked them to move. Everyone on the corner moved without much of a problem with the exception of one individual. PO Ortiz described this man as looking somewhat like himself, about 5'10" tall, bald, and approximately 40 years of age. This man, whom the CCRB identified as § 87(2)(b) refused to move.

PO Ortiz asked § 87(2)(b) a second time to move off of the staircase. § 87(2)(b) was very rude. He behaved as if it was his right to sit on the staircase. He said that he lived there and it was his right to sit there and PO Ortiz had no right to move him. § 87(2)(b) stated that he was staying with § 87(2)(b). PO Ortiz stated that he asked § 87(2)(b) to move because he was blocking traffic and the

individuals § 87(2)(b) was with are subject to violence against police officers. People shoot at the individuals § 87(2)(b) was with and there were children in the area. § 87(2)(b) is what attracted PO Ortiz to the area. PO Ortiz was quiet at first, as § 87(2)(b) and the other individuals present began to yell, PO Ortiz's level of verbal communication rose and his speech became more aggressive. He did not become physically aggressive. PO Ortiz told § 87(2)(b) "If I have to ask you a third time, you're coming with me." PO Ortiz told § 87(2)(b) that he was going to place him under arrest. § 87(2)(b) refused to move again and PO Ortiz cuffed him and frisked him for weapons. While PO Ortiz was frisking § 87(2)(b) for weapons, § 87(2)(b) was mouthing off and cursing. § 87(2)(b) drew a lot of attention. About forty people were gathered as a result of the noise § 87(2)(b) made. He said that PO Ortiz had no right, that he was going to file charges, and that he has family on the job. PO Ortiz and PO Reid placed two or three individuals up against the wall after they refused to move. PO Ortiz only remembered frisking § 87(2)(b) and § 87(2)(b) after he put them up against the wall. § 87(2)(b) said that he was going to file a CCRB complaint when he was against the wall being frisked. He does not recall frisking anyone else. PO Ortiz went inside § 87(2)(b)'s pockets to remove his identification after § 87(2)(b) told him his identification was in his pocket. § 87(2)(b) gave PO Ortiz permission to take his identification out of his pocket. § 87(2)(b) said that he lived out of state and that he was visiting. PO Ortiz stated that when he frisks an individual, he usually pats his hands over particular areas including an individual's pockets, waistband, armpits, sides, and an individual's back, to determine if they are carrying any weapons. PO Ortiz stated that he only used physical force to restrain § 87(2)(b) as he handcuffed him. The individuals in the crowd that gathered were making comments to PO Ortiz as he frisked the individuals. PO Ortiz does not recall the comments that the individuals made.

PO Ortiz put § 87(2)(b) inside the van and § 87(2)(b) began making a lot of noise which caused a crowd to gather. PO Ortiz drove around with § 87(2)(b) in the van for approximately twenty minutes before he issued him a disorderly conduct summons and released him from the van at around § 87(2)(b) and § 87(2)(b), which was about two blocks from the 46<sup>th</sup> Precinct and three blocks from where PO Ortiz had apprehended § 87(2)(b). PO Ortiz released § 87(2)(b) on the street because they were not going to take § 87(2)(b) into the precinct. PO Ortiz does not take individuals into the precinct until after the four-hour operation is finished. If someone is to be issued a summons, the individual is issued a summons from the van if that individual is picked up. PO Ortiz released § 87(2)(b) with a summons because he had committed a violation and it is "frowned upon" to put an individual through the system for a violation. § 87(2)(b) threatened PO Ortiz with a CCRB complaint. PO Ortiz explained to § 87(2)(b) that he had asked him to move and that he had subsequently given § 87(2)(b) a lawful order to move and § 87(2)(b) had refused. PO Ortiz told § 87(2)(b) that he had given him respect and that § 87(2)(b) had to give him the same respect on the street. § 87(2)(b) became calm, took the summons, and left.

PO Ortiz stated that only § 87(2)(b) refused to move, he later stated that he and his partner placed two to three individuals who refused to move up against the wall.

PO Ortiz stated that § 87(2)(b) got loud when he was placed inside the van, then he stated that § 87(2)(b) was being loud and causing a crowd to gather from the time PO Ortiz repeatedly asked him to move.

#### **PO Matthew Reid: CCRB Statement**

The CCRB interviewed PO Matthew Reid on February 20, 2008 (encl. 12A-B). Since the incident date, PO Reid was promoted to the rank of sergeant and reassigned to the 32<sup>nd</sup> Precinct. PO Reid is a § 87(2)(b) year-old White male. He is 5'8" tall and weighs 175 lbs. His hair is brown and his eyes are blue.

PO Reid stated that he was unaware of what hours he worked on June 4, 2007 because he did not bring his memo book to the interview. PO Reid stated that he worked in a SNEU assignment on the incident date and does not recall if he was dressed in uniform or in plainclothes. He was assigned to a motor vehicle which was most likely unmarked.

When shown a photocopy of § 87(2)(b)'s New York State driver's license, PO Reid stated that he recognized him and recalled his interaction with § 87(2)(b). Upon recollection of his interaction with § 87(2)(b), PO Reid recalled that he was working with PO Ortiz when he encountered § 87(2)(b). PO Reid stated that he and PO Ortiz stopped two males in the vicinity of § 87(2)(b) and § 87(2)(b).

PO Reid does not know the identity of the two males that he and PO Ortiz stopped. He does not know § 87(2)(b) PO Reid and PO Ortiz were working a SNEU assignment and stopping individuals who were engaging in drug transactions. It is likely that PO Reid and PO Ortiz received a radio transmission from an observation post that the two males were engaging in drug transactions. PO Reid and PO Ortiz approached the men. § 87(2)(b) approached PO Reid and PO Ortiz and began shouting obscenities; he placed himself between PO Ortiz and the two men PO Ortiz was questioning. § 87(2)(b) physically inserted first his hand and arm, and then his person, between PO Ortiz and the two men that the officers stopped. PO Ortiz was standing facing the two individuals. § 87(2)(b) may have made chest to chest contact with PO Ortiz when he subsequently inserted his person between PO Ortiz and the two men. PO Reid was standing next to PO Ortiz at this time. § 87(2)(b) was very aggressive, he said, "Get the fuck away from them. They didn't do shit. You're always fucking with people. Just get the fuck away from them. Who the fuck are you?"

At this time, § 87(2)(b) had committed O.G.A. and disorderly conduct. Before PO Reid could do anything, PO Ortiz told § 87(2)(b) to turn around and put his hands behind his back. § 87(2)(b) complied and PO Ortiz handcuffed and frisked § 87(2)(b). PO Reid does not believe any of the other individuals present were searched or frisked. A crowd began to form after PO Ortiz handcuffed § 87(2)(b). There was no back-up present at this time. PO Reid and PO Ortiz decided that the best course of action was to place § 87(2)(b) in their van and leave the scene. In the van, the officers ran a warrant search on § 87(2)(b) gave him a criminal court summons, and released him. § 87(2)(b) was issued a summons for O.G.A. and possibly issued a summons for disorderly conduct.

PO Reid does not recall if PO Ortiz or he told § 87(2)(b) that he would be put through the system. PO Reid did not observe § 87(2)(b) stating that he would call the CCRB or any comments made in response. PO Reid did not observe PO Ortiz threatening to arrest § 87(2)(b). PO Ortiz did not push or shove § 87(2)(b).

### **Criminal Conviction History of Civilian**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

### **Officer CCRB History**

PO Frederic Ortiz has not had any CCRB allegations that have resulted in the imposition of discipline (encl. 2).

### **Status of Summonses**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)

### **Conclusions and Recommendations**

#### **MOS Identification**

The CCRB identified PO Frederic Ortiz of the 46<sup>th</sup> Precinct from an I.A.B. log report and the tax identification number on the summons issued to § 87(2)(b) (encl. 8A-B).

PO Ortiz identified his partner, PO Matthew Reid, at the time of his CCRB interview. Both PO Ortiz and PO Reid recalled their participation in this incident and the officers match the descriptions that the complainant provided.

## Disputed and Undisputed Assertions

§ 87(2)(b) stated that his demeanor and tone of voice were calm and that he was compliant during his interaction with the officers. PO Ortiz and PO Reid stated that § 87(2)(b) behaved in a belligerent manner toward them and refused to comply with their directives. § 87(2)(g)

PO Reid stated that § 87(2)(b) physically interfered with PO Ortiz and used profanity toward the officers. § 87(2)(b) stated that PO Ortiz's demeanor was aggressive throughout the interaction. PO Ortiz stated that he raised his voice and his demeanor became aggressive in response to the accumulation of a crowd and the escalation of the situation. It is undisputed that § 87(2)(b) cooperated with PO Ortiz when he handcuffed him. § 87(2)(b), § 87(2)(g)

## Assessment of Evidence

§ 87(2)(g), § 87(2)(b)

PO Ortiz stated that § 87(2)(b), § 87(2)(b), attracted him, if not his partner, to the corner. PO Reid stated that he does not know § 87(2)(b) and that they likely approached the corner in response to a radio run reporting drug dealing on the corner. § 87(2)(b), § 87(2)(g)

Both officers stated that a crowd began to gather as a result of § 87(2)(b)'s disorderly behavior.

§ 87(2)(b) and PO Ortiz stated that PO Ortiz went into § 87(2)(b)'s pockets while he was frisking him which constitutes a search. PO Ortiz stated that he had § 87(2)(b)'s permission to remove his wallet from his pants in order to access his identification.

PO Reid § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that the officers removed § 87(2)(b) from the corner due to their lack of back-up and the escalating situation with the gathering of the crowd on the corner. § 87(2)(b) stated that the officers were not in uniform and did not identify themselves as officers; he further stated that he recognized PO Ortiz as an officer from a previous encounter. § 87(2)(b), § 87(2)(g)

**Allegation A: PO Frederic Ortiz stopped** § 87(2)(b)

**Allegation B: PO Frederic Ortiz searched** § 87(2)(b)

§ 87(2)(b) stated that PO Ortiz and PO Reid stopped him upon observing him on the street. PO Ortiz subsequently frisked § 87(2)(b) and removed his wallet from his pants for the purpose of accessing his identification. § 87(2)(b), § 87(2)(g)

Patrol Guide section 212-11 states that "when a uniformed member of the service reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor," the officer may stop a person and request identification and explanation of conduct. Further, the officer may frisk the individual if the officer has reasonable suspicion to fear for his or her own safety or the safety of others. § 87(2)(b), § 87(2)(g)

**Allegation C: PO Frederic Ortiz threatened to arrest** § 87(2)(b)

§ 87(2)(b) stated that PO Ortiz told him that if he kept talking, he would be put through the system. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) OATH case, Police Department v. Cruz, OATH Index Nos. 303 & 310/98 (April 15, 1998), modified on penalty, Comm'r Dec. (Apr. 4, 2000)(p.14), has determined that in regards to warning an individual of the possibility of arrest to gain compliance,

“ . . . Telling an upset patron to calm down or he will be arrested is hardly a threat, but rather a useful way to diffuse a potential physical confrontation” (encl. 1A-D).

§ 87(2)(b), § 87(2)(g)

**Allegation D: PO Frederic Ortiz issued a summons to** § 87(2)(b)

§ 87(2)(b) alleged that PO Ortiz issued him a summons in retaliation regarding § 87(2)(b) voicing his intention to file a complaint against PO Ortiz. PO Ortiz stated that he issued § 87(2)(b) a summons for O.G.A. and possibly for disorderly conduct. § 87(2)(b), § 87(2)(g)

Investigator:  
T. Darden

Date: 5.15.2008

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: